



Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: David Lacy
File: B-245061
Date: April 15, 1992

DIGEST

Agency regulation that prohibits payment of per diem for travel of more than one calendar day when the travel performed by the employee is within a 35-mile radius of his official station is in accord with FTR, § 301-7.5(a) (1991). The agency regulation also permits exceptions to be made for unique agency program requirements. Under the circumstances of this case, since the employee's attendance was needed at a training site at night as well as during the regular workday, we would not object to payment of per diem based on unique program requirements.

DECISION

A certifying officer of the Forest Service, United States Department of Agriculture, asks whether a travel voucher claim for \$211.34 submitted by Mr. David Lacy, an employee, may be paid. We would not object to payment of his per diem as authorized by the agency's travel regulation.

Mr. Lacy attended and conducted a workshop/training program on April 16-19, 1990, for employees of the Forest Service in Middlebury, Vermont, a distance of 32 miles from his official duty station in Rutland, Vermont. Mr. Lacy stayed in Middlebury for the duration of the program, incurring the \$211.34 expenses in question.

The agency believes that Mr. Lacy's full-time attendance at the meeting site was necessary, since night sessions were held to shorten the number of days required to give the training. It therefore wants to pay his travel voucher, but questions whether it may do so in view of a Department of Agriculture travel regulation. That regulation provides that per diem may not be paid (1) for travel within one calendar day when the travel is performed within a 25-mile radius of the employee's official duty station or home, and (2) for travel of more than 1 day when the travel is performed within a 35-mile radius of the employee's official duty station. Agriculture Travel Regulations (ATR) 1-7.4(a) (1) and (2). Since the agency workshop was held 32 miles away from Mr. Lacy's duty station, the certifying

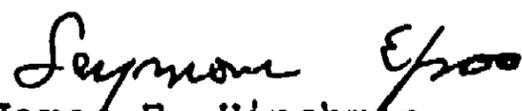
officer believes that the regulation precludes reimbursement of Mr. Lacy's travel of more than one calendar day duration.

Forest Service officials suggest, however, that the 35-mile provision of the Agriculture travel regulations may not be enforceable in light of the language of the FTR. They note that the Federal Travel Regulation (FTR) on which its travel regulation is generally based merely provides that agencies "may define a radius . . . within which per diem will not be allowed for travel within one calendar day." FTR 301-7.5(a) (1991). The Forest Service asks whether an agency may also define a radius within which per diem will not be allowed for travel of more than one calendar day.

We believe agencies are free to do so. In this connection, we have recognized that, where an employee's travel is outside the corporate limits of the city or town in which the employee is stationed but within a short distance from his or her official duty station, the employee's agency has the discretion to determine if per diem expenses should be authorized. Joyce Price, B-228687, Dec. 5, 1988; Jon C. Geist, B-189731, Jan. 3, 1978. An agency's discretion to make this determination does not depend on whether the employee is claiming travel for less than one calendar day or for more. Id. Agriculture has exercised its discretion through a regulation that precludes per diem within a 25-mile radius of an employee's duty station. In addition, it has provided that per diem will not be paid for an overnight stay within a 35-mile radius of the duty station. We see nothing in the FTR which prohibits such a regulation. The agency could have precluded all per diem within the 35-mile radius; a regulation which instead provides limited per diem between 25 and 35 miles is equally permissible.

The Agriculture regulation provides that "Agency heads may request from the Director, OFM, authority to pay per diem within the prescribed mileage radius for unique agency program requirements, e.g., when it is advantageous to keep employees at fire camps or other emergency locations." ATR 1-7.4a.

The facts indicate that Mr. Lacy's attendance at the training site was needed at night as well as during the regular workday. It appears to us that this is the type of situation contemplated by the regulation for which an exception may be made to allow payment of per diem. Therefore, under the circumstances of this case, we would not object to the payment of per diem to Mr. Lacy.

for 
James F. Hinchman
General Counsel